

Report of	Meeting	Date
Director of People and Places (Introduced by the Executive Member for Places)	Executive Cabinet	15 August 2013

LAND DRAINAGE ACT 1991 – REVIEW OF LAND DRAINAGE POLICY

PURPOSE OF REPORT

1. To advise Members of a review of the Councils Land Drainage policy and seek approval for amendments to the policy for the purposes of clarity.

RECOMMENDATION(S)

2. Members are asked to approve the retention of the priority basis on which Council resources are deployed to assist householders/landowners with land drainage investigations.
3. Members are asked to approve the principles in paragraphs 9 to 12 below in the application of the Land Drainage policy

EXECUTIVE SUMMARY OF REPORT

4. In June 2007 the Council adopted the permissive powers contained in the Land Drainage Act 1991 and set out the circumstances under which land drainage investigations and associated powers would be deployed by the Council.
5. In the light of officer activity in this area a review of the policy has been undertaken to clarify areas of uncertainty and ensure the policy is consistently applied given the limited resources, capacity and capability the Council has in terms of land drainage issues.
6. In the vast majority of cases the issue of land drainage is a private matter to be resolved by the land owners or occupiers where the issue arises and ultimately the matter would need to be resolved through civil proceedings between the respective parties.
7. The current policy which is contained in the report to Executive Cabinet 28 June 2007 identifies several situations where insufficient land drainage provision or defective land drainage infrastructure (ditches, field drains etc.) could have an adverse impact. These are:

No	Definition
1	Internal flooding – domestic premises
2	Imminent threat of repeat internal flooding – domestic premises
3	Nuisance to highway network/environment
4	Other internal flooding – non domestic premises
5	Flooding to amenity areas in proximity to property
6	Flooding to amenity areas remote from property
7	Fields/farms
8	Footpaths/rights of way

8. The current policy determines that Council resources will only be deployed in situations 1 and 2.

9. It is proposed to retain this application of resources but based on the following broad principles:
- a. Flooding to domestic premises means ingress of surface or flood water to living accommodation and does not extend to gardens, garages or other outbuildings.
 - b. There is a general principle that flood defence measures to land and property are the responsibility of the owner or occupier of that land and property.
 - c. Where flooding has occurred following a severe weather event then the policy would not apply, notwithstanding that the Council may direct resources in terms of an emergency planning response and assistance in a recovery phase during and following a severe weather event.
 - d. Where the cost of investigation work puts the Council at financial risk due to costs not being recoverable, an element of discretion will need to be applied. When the resource required to continue an investigation becomes disproportionate to the benefit of Council tax payers in general, then the Executive Member for Places would determine if that investigation should continue.
10. Therefore the policy would only be applicable to land where, under normal weather conditions and rainfall levels; there was ineffective, inadequate or defective land drainage so as to cause flooding as described in situations 1 and 2 above.
11. In all other cases the land/premises owner or occupier will be advised to seek a resolution as a private matter between the parties concerned.
12. In terms of Council land and assets that give rise to land drainage issues affecting third parties then the Councils Property Services resource would take appropriate action in all such situations

Confidential report Please bold as appropriate	Yes	No
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Key Decision? Please bold as appropriate	Yes	No
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Reason Please bold as appropriate	1, a change in service provision that impacts upon the service revenue budget by £100,000 or more	2, a contract worth £100,000 or more
	3, a new or unprogrammed capital scheme of £100,000 or more	4, Significant impact in environmental, social or physical terms in two or more wards

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

13. To ensure resources are effectively and proportionately used to seek a remedy where flooding to domestic properties can be attributed solely to land drainage deficiencies or defects or where an imminent risk of flooding occurs in such circumstances.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

14. None.

CORPORATE PRIORITIES

15. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy communities	√	An ambitious council that does more to meet the needs of residents and the local area	

BACKGROUND

16. The purpose of Land Drainage Act 1991 and the Councils role as enforcer is not to provide a remedy to private land drainage issues, but to use statutory powers to identify a cause, specify a remedy and require the respective land owner or occupier to implement the remedy by formal means if necessary. The Act makes provision for the Council to undertake works in default and recover the costs.
17. In some circumstances land drainage engineering and associated hydrological survey/modelling skills are required to investigate the problem and specify a remedy. The Council does not have such capability and would need to 'buy in' such expertise.
18. The costs of any land drainage investigation work would not be recoverable and therefore dependant on the nature of the problem the Council must retain the discretion to deviate from the policy and withdraw from investigation work. Land owners/occupiers affected by such a decision would be advised to seek a private remedy and independent legal advice on the matter.

IMPLICATIONS OF REPORT

19. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	√	Customer Services	
Human Resources		Equality and Diversity	√
Legal	√	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	√

COMMENTS OF THE STATUTORY FINANCE OFFICER

20. There is a small budget provision of around £1k for land drainage investigation work; therefore any requirement above this amount would have to be funded from alternative sources. The Council is able to recover the cost in respect of any investigation works under the current legislation.

COMMENTS OF THE MONITORING OFFICER

21. The legislation remains unchanged and the Council have no obligation under it to take action. The Act provides only the power to undertake works at their discretion (to be reasonably exercised). The policy assists in evidencing the reasonableness of the Council's actions.

COMMENTS OF THE HEAD OF POLICY AND COMMUNICATIONS

22. In line with the Equality Scheme, an integrated impact assessment will be undertaken to identify any potential adverse impact of the change to the policy on groups identified as an equality strand in the equality scheme. If necessary, an action plan will be prepared to mitigate the adverse impact.

JAMIE CARSON
DIRECTOR OF PEOPLE AND PLACES

Background Papers			
Document	Date	File	Place of Inspection
Land Drainage Act - Land Drainage Policy	25 June 2007	Modgov	Council Intranet

Report Author	Ext	Date	Doc ID
Simon Clark	5732	July 2013	Landdrainage2013